

FINDING OF EMERGENCY

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulation is necessary for immediate action to avoid serious harm to the public peace, health, safety, or general welfare, pursuant to Government Code Section 11342.545.

Specific Facts Showing the Need for Immediate Action

Immediate action is needed to approve, on an emergency basis, proposed regulatory amendments for the School Facility Program (SFP). On June 30, 2022, the Governor signed into law Assembly Bill (AB) 181, Chapter 52, Statutes of 2022, the Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill. For the 2022/23 fiscal year, this bill appropriated \$1.3 billion in one-time General Fund dollars to the SAB for allocation to eligible SFP projects, specifically new construction and modernization projects. In addition to the \$1.3 billion, the Legislature has declared its intent to appropriate an additional \$2,060,500,000 from the General Fund in the 2023/24 fiscal year and an additional \$875 million from the General Fund in the 2024/25 fiscal year for the same purposes, funding eligible new construction and modernization projects under the SFP until December 31, 2025.

At its meeting on September 21, 2022, the SAB approved proposed regulations that would shorten the fund release deadlines with the direct Apportionment process for purposes of distributing the General Fund proceeds, or any other available proceeds, to those projects that would be able to quickly use the funds. As a result of receiving funding for the SFP that is not contingent on bond sales, the SAB is able to return to using an existing funding process that allows for Apportionments to be made on a flow basis outside the current Priority Funding process, which is designed to accommodate twice yearly bond sales. Making Apportionments on a flow basis will enable school districts to more quickly and efficiently access much needed cash for construction projects. In order to ensure that cash moves quickly once allocated to school districts, the change to the regulations shortens the deadlines for fund release from 18 months to either 180 calendar days for non-financial hardship school districts or 365 calendar days for school districts that qualify for financial hardship. Without this change, the General Fund proceeds could potentially sit unused for extended periods of time. It is necessary to implement these changes on an emergency basis to begin using the General Funds with the new protections in place. Approving the proposed regulations on an emergency basis allows for projects that would normally be placed on the Unfunded List (Lack of AB 55 Loans) to receive direct Apportionments using funds that are available now, rather than waiting to participate in the Priority Funding Process in the first half of 2023 and then waiting to receive an Apportionment in spring 2024. The proposed regulations provide an efficient mechanism for providing ongoing direct apportionments to projects outside the typical Priority Funding timelines. This ensures an equitable and streamlined process for school construction projects, as well as maintaining the integrity of date order received for projects. It also ensures that cash proceeds readily available are not sitting unused waiting for distribution.

Failure to approve the proposed regulatory amendments on an emergency basis could result in an inability to make use of all the cash proceeds authorized for the SFP as part of the 2022/2023 Budget Act in a timely fashion. This would cause an unnecessary delay in providing cash to school districts with shovel ready construction projects. Processing the regulations through the Administrative Procedures Act on a non-emergency basis could take as long as six months, which potentially places the effective date around March 2023. No apportionments would be made from the \$1.3 billion until the regulations became effective, which would mean funds would remain from the \$1.3 billion and would unnecessarily carry-over to the 2023/24 fiscal year.

Background and Problem Being Resolved

The problem being resolved is not a problem but a funding opportunity in which projects that are construction ready are able to receive an Apportionment outside the Priority Funding process. As stated in the introductory paragraph of this document, AB 181, Chapter 52, Statutes of 2022 [Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill] was signed by the Governor on June 30, 2022 and included a one-time General Fund appropriation in the amount of \$1.3 billion. The SAB has been charged with allocating the one-time General Fund appropriation to eligible SFP new construction and modernization projects.

Current Priority Funding Process

The Priority Funding Process is a process by which school districts submit certification requests for cash for projects that have received unfunded approvals and are sitting on the Unfunded List (Lack of AB 55 Loans). Priority Funding certification requests are submitted twice a year during two specific 30-day filing periods, are good for six months, and the requests indicate a school district's desire to convert a project's unfunded approval to an apportionment. For example, one of the 30-day filing periods for school districts to submit certification requests began May 11, 2022 and ended June 9, 2022. The certification requests received during this 30-day filing period are valid from July 1, 2022 through December 31, 2022 for school district projects to be eligible for cash from the Fall 2022 General Obligation Bond sale. The next 30-day filing period for school districts to submit certification requests will begin November 9, 2022 and will end December 8, 2022. The certification requests received during this 30-day filing period are valid from January 1, 2023 through June 30, 2023 for their projects to be eligible for cash from the Spring 2023 General Obligation Bond sale.

Direct Apportionment Process

In addition to the method of providing funding to convert unfunded approvals as noted above, the one-time \$1.3 billion General Fund appropriation is an opportunity for cash to be allocated quicker than expected for those projects that are construction ready. This process would allow the SAB to apportion funds on an on-going monthly basis.

OPSC performed a search on whether the proposed regulations were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that there are no other programs or regulations in existence that allow the SAB to allocate General Fund appropriations for the funding of school construction in an efficient manner. Therefore, the proposed regulations are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulations provides an efficient mechanism for providing apportionments to projects outside the typical Priority Funding timelines, while ensuring an equitable and streamlined process for school construction projects, as well as maintaining the integrity of the SFP funding process.

OPSC, on behalf of the SAB, will notify school districts and other interested parties of its intent to submit the proposed regulations to the Office of Administrative Law (OAL) in October 2022, pursuant to Government Code Section 11346.1(a)(2). The proposed regulations will be attached and may also be viewed on OPSC's website at:

<https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>, then scroll down to "SFP," Pending Regulatory

Changes and click on the AB 1302 Emergency Notice, Finding of Emergency and the regulation text, along with the Grant Agreement templates.

Authority and Reference Citations

Authority: Section 17070.35 of the Education Code.

Reference: Sections 17072.12, 17072.30, 17074.15, 17076.10, 17077.40, 17077.42 and 17077.45 of the Education Code.

Information Digest/Policy Overview Statement

At its meeting on September 21, 2022, the SAB approved proposed regulations, on an emergency basis, that would shorten the fund release deadlines with the direct Apportionment process for purposes of more efficiently distributing the General Fund proceeds, or any other available proceeds, to those projects that would be able to quickly use the funds. The Governor signed into law Assembly Bill (AB) 181, Chapter 52, Statutes of 2022, the Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill, on June 30, 2022. The bill appropriated, for the 2022/23 fiscal year, \$1.3 billion in one-time General Fund dollars to the SAB for allocation to eligible SFP projects, specifically new construction and modernization projects. In addition to the \$1.3 billion, the Legislature has declared its intent to appropriate an additional \$2,060,500,000 from the General Fund in the 2023/24 fiscal year and an additional \$875 million from the General Fund in the 2024/25 fiscal year for the same purposes, funding eligible new construction and modernization projects under the SFP until December 31, 2025.

Summary of the Proposed Regulations

A summary of the proposed regulations are as follows:

Existing Regulation Section 1859.90 specifies the process for school districts to request the release of funds for SAB-approved apportionments and requires that the requests be submitted within 18 months of the SAB apportionment approval. The proposed regulatory amendments align the direct Apportionment process with the timelines of the existing Priority Funding process by eliminating the 18-month timeline to submit a valid Form SAB 50-05 and Grant Agreement and changing it to 180 days to request the release of funds for non-financial hardship school districts and 365 days for those school districts approved with financial hardship status. In addition to these amendments, the language reference to the Pooled Money Investment Board (PMIB) is being removed as the SFP has not received financing in advance of bond sales from the PMIB in 13 years and there is no indication that this will be a source of funds in the near future. Leaving this language in this section is not necessary for the direct Apportionment process.

The existing grant agreement templates include sections relevant to funding provided by the New Construction Program, the Modernization Program, the Charter School Facilities Program, and the Career Technical Education Facilities Program. The grant agreements are entered into for every future funding application that is processed; therefore, each grant agreement will contain the relevant program's sections. The grant agreements were developed to address the Office of Statewide Audits and Evaluation's audit findings by improving program oversight and expenditure accountability. The grant agreement also includes changes that implement the trailer bill language (AB 99, Chapter 15, Statutes of 2017), which the Governor signed into law on June 27, 2017. The grant agreements serve as binding documents and key resources that define the responsibilities of the state and school districts from the determination of the amount

of eligible state funding to the reporting of all project funds, including any savings achieved. This ensures transparency and accountability for the program grants being awarded under the SFP. The proposed amendments make subtle changes that align themselves with the amended direct Apportionment process.

Overall, the proposed regulations address the shortened direct Apportionment process of funding SFP projects with funds made available from unexpected cash proceeds from sources other than bond funds outside of the Priority Funding Process. The proposed regulations do not supersede the Priority Funding Process; rather, the proposed regulations streamline the funding process when cash proceeds are made available to fund projects under the SFP that are not dependent on the timing and occurrence of bond sales.

Mandate on Local Agencies or School Districts

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require school districts to incur additional costs to comply with the proposed regulations.

Cost Estimate

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact that might result from the proposed regulatory action, and it has been determined that:

- There will be no costs or savings to the State.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.

Technical Documents Relied Upon

- The OPSC's stakeholder agenda item, dated August 2, 2022, entitled "Proposed Regulatory Amendments to Allocate Monies Appropriated from Non-Bond Sources."
- The SAB's Action Item, dated September 21, 2022, REPORT OF THE EXECUTIVE OFFICER, entitled "Emergency Regulations to Allocate Monies Appropriated From Non-Bond Sources."

Benefits of the Proposed Regulations

There are benefits associated with the proposed regulations. School districts will benefit because the General Fund appropriation will be made available to the SAB for Apportionments to districts on an on-going basis once the emergency regulations become effective. Because school districts can receive funding so quickly, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may expand based on the demand on these industries. This is a positive impact on the state's economy and may also create an unknown number of jobs. Overall, proceeding with the implementation of the proposed regulations provides an efficient mechanism for quickly using cash resources by providing apportionments to projects outside the typical Priority Funding timelines, while ensuring an equitable and streamlined process for school construction projects, as well as maintaining the integrity of the SFP funding process.